

A party dissatisfied with the decision of the appeals board may file a request for review within thirty days from the date of the decision, which shall be a written request and memorandum stating the reasons why the appeals board's decision is in error and containing appropriate citations

of the record, rules and other authority. Upon motion, and for good cause, the appeals board may extend the time for filing a request for review. The timely filing of such a request for review is a prerequisite to any further appeal ... (emphasis added).

Arizona Administrative Code, Section R6-3-1404 provides in pertinent part:

A. Except as otherwise provided by statute or by Department regulation, any payment, appeal, application, request, notice, objection, petition, report, or other information or document submitted to the Department shall be considered received by and filed with the Department:

1. If transmitted via the United States Postal Service or its successor, on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark, of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
2. If transmitted by any means other than the United States Postal Service or its successor, on the date it is received by the Department.

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B. The submission of any payment, appeal, application, request, notice, objection, petition, report, or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the Department that the delay in submission was due to: Department error or misinformation, delay or other action of the United States Postal Service or its successor, or when the delay in submission was because the individual changed his mailing address at a time when there would have been no reason for him to notify the Department of the address change.

1. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

2. The Director shall designate personnel who are to decide whether an extension of time shall be granted.
3. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the Department after considering the circumstances in the case.

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- C. Any notice, report form, determination, decision, assessment, or other document mailed by the Department shall be considered as having been served on the addressee on the date it is mailed to the addressee's last known address if not served in person. ... [Emphasis added].

The record reveals that a copy of our previous decision was sent by mail on March 1, 2007, to the Employer's last known address of record. A request for review of that decision had to be filed by April 2, 2007. Neither a request for review nor a request for an extension of time to file the request for review was filed within this time. The request for review was postmarked, and therefore was filed, pursuant to Arizona Administrative Code, Section R6-3-1404, on April 11, 2007.

In the request for review, the Employer notes that he is "... in the unfortunate position of missing a phone hearing. This was a hearing that I requested ...". He explains that his accountant advised him there had been a phone hearing set up for him:

... to explain what transpired within our office during these time frames. I did not see, or do not remember seeing any letter sent to me in regards to this phone hearing, I apologize for this oversight sincerely. ... We have had all of the addresss's [sic] changed back to our P.O. Box.

The Employer offers no further explanation for filing a late request for review.

The Employer has not alleged any fact which, if accepted as true, would invoke the provisions of Arizona Administrative Code, Section R6-3-1404(B), and permit finding the request for review timely filed. Therefore, the Employer has failed to meet the statutory requirements for review. Accordingly,

THE APPEALS BOARD **DISMISSES** the request for review. The Appeals Board decision issued on March 1, 2007, remains in full force and effect.

DATED:

APPEALS BOARD

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MARILYN J. WHITE, Chairman

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HUGO M. FRANCO, Member

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WILLIAM G. DADE, Member

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**PERSONS WITH DISABILITIES:** Under the Americans with Disabilities Act, the Department must make a reasonable accommodation to allow a person with a disability to take part in a program, service, or activity. For example, this means that if necessary, the Department must provide sign language interpreters for people who are deaf, a wheelchair accessible location, or enlarged print materials. It also means that the Department will take any other reasonable action that allows you to take part in and understand a program or activity, including making reasonable changes to an activity. If you believe that you will not be able to understand or take part in a program or activity because of your disability, please let us know of your disability needs in advance if at all possible. Please contact the Appeals Board Chairman at (602) 229-2806.

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**RIGHT OF APPEAL TO THE ARIZONA TAX COURT**

This decision on review by the Appeals Board, is the final administrative decision of the Department of Economic Security. However, any party may appeal the decision to the Arizona Tax Court, which is the Tax Department of the Superior Court in Maricopa County. If you have questions about the procedures on filing an appeal, you must contact the Tax Court at (602) 506-3763.

For your information, we set forth the provisions of Arizona Revised Statutes, § 41-1993(C) and (D):

C. Any party aggrieved by a decision on review of the appeals board concerning tax liability, collection or enforcement may appeal to the tax court, as defined in section 12-161, within thirty days after the date of mailing of the decision on review. The appellant need not pay any of the tax penalty or interest upheld by the appeals board in its decision on review before initiating, or in order to maintain an appeal to the tax court pursuant to this section.

D. Any appeal that is taken to tax court pursuant to this section is subject to the following provisions:

1. No injunction, writ of mandamus or other legal or equitable process may issue in an action in any court in this state against an officer of this state to prevent or enjoin the collection of any tax, penalty or interest.
2. The action shall not begin more than thirty days after the date of mailing of the appeals board's decision on review. Failure to bring the action within thirty days after the date of mailing of the appeals board's decision on review constitutes a waiver of the protest and a waiver of all claims against this state arising from or based on the illegality of the tax, penalties and interest at issue.
3. The scope of review of an appeal to tax court pursuant to this section shall be governed by section 12-910, applying section 23-613.01 as that section reads on the date the appeal is filed to the tax court or as thereafter amended. Either party to the action may appeal to the court of appeals or supreme court as provided by law.
4. The action cannot be initiated or maintained unless the appellant has previously filed a timely request for review under section 23-672 or 41-1992 and a decision on review has been issued.

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A copy of the foregoing was mailed by certified mail on to:

(x) Er.: X

Acct. No: X

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By: \_\_\_\_\_  
For The Appeals Board -